



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Nebraska Service Center

Date: AUG 10 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John J. Griffin
Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be remanded to the director for further action.

The applicant is a native and citizen of [REDACTED] who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the applicant had failed to establish that he is a lawful permanent resident or conditional permanent resident of the United States.

On appeal, counsel asserts that the director erred in his decision. He states that the applicant was asked to prove that he was an asylee or a refugee, rather than to prove that he was a permanent resident. Counsel states that the applicant, however, provided a copy of the immigration judge's decision granting him adjustment of status to permanent resident based on his marriage to a United States citizen. He claims that the applicant cannot provide a copy of his I-551 because the Service has not yet issued it, nor has he been called in for "ADIT" processing.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

With certain exceptions¹, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident.

As evidence of the applicant's status in the United States, counsel submits a copy of an order of the immigration judge granting the applicant adjustment of status to permanent residence under section 245 of the Act, 8 U.S.C. 1255, on December 4, 1998. The applicant has, therefore, established that he was granted lawful permanent residence prior to the filing of the application.

However, the record reflects that the application for a reentry permit was filed on April 19, 1999. The applicant's intended

¹See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form. A review of the record reveals that none of these exceptions to the approval of a reentry permit is present in the matter at hand.

departure from the United States was February 1, 1999. Regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States. There is no evidence in the record to establish that the applicant was requested to submit evidence of the date of his departure from the United States, or evidence that he was in the United States when the application was filed.

The case will, therefore, be remanded in order that the director may accord the applicant an opportunity to submit the required evidence. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.